

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In re Applications of)	MM Docket No. 97-76
)	
POSITIVE ALTERNATIVE RADIO, INC.)	File No. BPED-920327MH
)	
For Construction Permit for a New)	RECEIVED
Noncommercial Educational FM Station)	
on 88.1 MHz (Channel 201A) at)	AUG 20 1997
Point Pleasant, West Virginia)	FEDERAL COMMUNICATIONS COMMISSION
)	OFFICE OF THE SECRETARY
and)	
)	
THE UNIVERSITY OF WEST VIRGINIA)	File No. BPED-921023MB
BOARD OF TRUSTEES)	
)	
For Modification of Facilities of Station)	
WMUL-FM at Huntington, West Virginia)	

To: Honorable Arthur I. Steinberg
 Administrative Law Judge

**JOINT REQUEST FOR APPROVAL
 OF SETTLEMENT**

POSITIVE ALTERNATIVE RADIO, INC. ("PAR") and THE UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES ("University"), pursuant to Section 73.3523 of the Rules, hereby respectfully submit this Joint Request for Approval of Settlement, and request that the associated technical amendments recently submitted by PAR and University, which resolve the mutual exclusivity between their respective radio proposals, be approved by the Federal Communications Commission ("FCC" or "the Commission"). In support whereof, the following is shown:

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Introduction

1. This settlement has been reached by virtue of the submission of technical amendments by both PAR and University. The parties submitted a Joint Motion for Suspension of Procedural Dates on June 17, 1997, which was granted June 24, 1997. Subsequently, on or about August 1, 1997, PAR and University submitted their respective technical amendments.

2. In the absence of this proposed settlement, a costly and time-consuming evidentiary hearing or other resolution process must be held before the Commission.

The Settlement

3. The parties, upon discussions between principals or their counsel, concluded that the public interest would best be served by each party submitting a technical amendment to resolve the mutual exclusivity between their respective proposals. As part of the proposed settlement, PAR also agreed to assume the cost of preparing University's technical amendment, which has a fair market value of \$2,240.57. *See attached **Exhibit No. 1**, letter from Roy P. Stype, dated August 14, 1997.* Other than PAR's assumption of said engineering costs, there is no other monetary consideration involved in this settlement.

Public Interest Showing

4. Grant of this Joint Request and approval of the respective technical amendments referenced herein would serve the public interest. The resources of both the parties and the Commission would be conserved, and the communities of Point Pleasant, West Virginia and Huntington, West Virginia

would receive new (Point Pleasant) or improved (Huntington) aural broadcast service at an early date.


5. Also attached hereto as *Exhibit No. 2 (Exhibits 2A and 2B)* are the Declarations of principals of both PAR and University, stating why they believe the technical settlement is in the public interest, that they did not file their respective applications for the purpose of reaching or achieving a settlement, and that PAR's assumption of University's engineering costs is the only agreement regarding consideration between the parties, no other consideration having been paid or promised to be paid.

Conclusion

WHEREFORE, the above premises considered, the undersigned parties hereby respectfully request that this Joint Request for Approval of Settlement be GRANTED, and that the technical amendments submitted on or about August 1, 1997 by each party be GRANTED.

Respectfully submitted,

POSITIVE ALTERNATIVE RADIO, INC.

By: 

Cary S. Tepper
Christopher D. Imlay

Its Counsel

Booth, Freret, Imlay & Tepper, P.C.
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20036
(202) 296-9100

**THE UNIVERSITY OF WEST VIRGINIA
BOARD OF TRUSTEES**

By: William D. Silva /esr

William D. Silva

5335 Wisconsin Avenue, N.W.

Suite 400

Washington, D.C. 20015-2003

(202) 362-1711

August 20, 1997

Exhibit No. 1

CARL E. SMITH CONSULTING ENGINEERS

"SERVING THE BROADCAST INDUSTRY FOR OVER 50 YEARS"

TELEPHONE: 216/659-4440

TELECOPIER: 216/659-9234

AL WARMUS, P.E.

2324 N. CLEVE-MASS RD., BOX 807
BATH, OHIO 44210-0807

August 14, 1997

ROY STYPE
JERRY SMITH
ELMER STEINGASS
DEREK GORMAN
ROGER STEVENS
EARL MILLER

Mr. Cary Tepper
Booth, Freret, Imlay & Tepper
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, DC 20016-4120

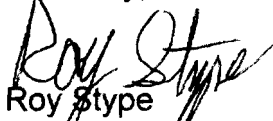
Via Telecopier

Dear Cary:

As requested, this letter will serve to provide an accounting of our charges to Positive Alternative Radio, Inc., for engineering services related to resolving the conflict between their application for a construction permit for a new noncommercial educational FM station on Channel 201 in Point Pleasant, West Virginia, and the application of WMUL(FM) - Huntington, West Virginia, for a construction permit to improve their operating facilities. Our total charges for these services over the period from March 1, 1997, through July 31, 1997, were \$4481.13, of which half, or \$2240.57, can be attributed to services provided on behalf of WMUL at the expense of Positive Alternative Radio, Inc.

Please don't hesitate to call if you have any questions following your review of this information.

Sincerely,


Roy Stype
Vice President

cc: Vernon Baker
(Via Telecopier)

Exhibit No. 2

DECLARATION OF VERNON H. BAKER

1. My name is Vernon H. Baker. I am President of Positive Alternative Radio, Inc. ("PAR"), an Applicant before the Federal Communications Commission ("FCC") for a Construction Permit to construct a new FM Noncommercial Broadcast Station on Channel 201A in Point Pleasant, West Virginia (FCC File No. BPED-920327MH).

2. PAR's Application was mutually exclusive with that of the University of West Virginia Board of Trustees ("University"), an Applicant before the Federal Communications Commission ("FCC") for a Construction Permit to modify the facilities of WMUL-FM at Huntington, West Virginia (FCC File No. BPED-921023MB).

3. We reached an agreement with University whereby each of us would submit a technical amendment to resolve the mutual exclusivity between our respective radio proposals, and whereby PAR would assume the cost of preparing the WMUL-AM technical amendment, which we understand to have a fair market value of Two Thousand Two Hundred Forty and 57/100 Dollars (\$2,240.57). Other than the assumption of University's engineering costs, PAR has not paid nor promise to pay any other consideration to University.

4. I believe approval of the technical settlement would be in the public interest. It would completely eliminate the need to hold an evidentiary hearing in this proceeding, thereby conserving valuable agency and private resources, and would provide for the expeditious commencement of an improved aural broadcast service to Huntington, West Virginia, and new aural broadcast service to Point Pleasant, West Virginia.

5. In compliance with Section 73.3525(a)(2) of the FCC Rules, this is to state that PAR did not file its application with the intent or for the purpose of effecting a settlement of this case. We were, and remain fully prepared to prosecute our original application in a vigorous manner, if required.

6. Under penalty of perjury, I declare that the foregoing facts are true and correct to the best of my knowledge, information, and belief, except for those facts which are a matter of official notice, and as to those, I believe them to be true.

Aug 18, 1997

Dated

Vernon H Baker

Vernon H. Baker

DECLARATION OF J. WADE GILLEY**President of Marshall University**

1. My name is J.Wade Gilley. I am the _____ of the University of West Virginia Board of Trustees, an Applicant before the Federal Communications Commission ("FCC") for a Construction Permit to modify the facilities of FM Noncommercial Broadcast Station WMUL (FCC File No. BPED-921023MB).

2. The Application of WMUL-FM was mutually exclusive with that of Positive Alternative Radio, Inc. ("PAR"), an Applicant before the FCC for a Construction Permit to construct a new FM Noncommercial Broadcast Station on Channel 201A in Point Pleasant, West Virginia (FCC File No. BPED-920327MH).

3. We reached an agreement with PAR whereby each of us would submit a technical amendment to resolve the mutual exclusivity between our respective radio proposals, and whereby PAR would assume the cost of preparing the WMUL-~~AM~~ FM technical amendment, which we understand to have a fair market value of Two Thousand Two Hundred Forty and 57/100 Dollars (\$2,240.57). Other than the assumption of the engineering costs, the University of West Virginia Board of Trustees has not been paid nor promised to be paid any other consideration.

4. I believe approval of the technical settlement would be in the public interest. It would completely eliminate the need to hold an evidentiary hearing in this proceeding, thereby conserving valuable agency and private resources, and would provide for the expeditious commencement of an improved aural broadcast service to Huntington, West Virginia, and new aural broadcast service to Point Pleasant, West Virginia.

5. In compliance with Section 73.3525(a)(2) of the FCC Rules, this is to state that the University of West Virginia Board of Trustees did not file its application with the intent or for the purpose of effecting a settlement of this case. We were, and remain fully prepared to prosecute our original application in a vigorous manner, if required.

6. Under penalty of perjury, I declare that the foregoing facts are true and correct to the best of my knowledge, information, and belief, except for those facts which are a matter of official notice, and as to those, I believe them to be true.

Friday, August 15, 1997

Dated


(Typed Name of Signatory)


Dr. J. Wade Gilley
President, Marshall University

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 20th day of August, 1997, I have served a copy of the foregoing "**Joint Request for Approval of Settlement**" first-class, postage-prepaid, on the following:

*Hon. Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 228
Washington, D.C. 20554

*Sonia Greenaway, Esq.
James Shook, Esq.
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554


Cary S. Tepper, Esq.

*denotes Delivery By Hand